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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,466	04/01/2004	John Cobian	10588/1	6378

7590 10/28/2005
Wolff & Samson PC
One Boland Drive
West Orange, NJ 07052

EXAMINER

MOHANDESI, JILA M

ART UNIT PAPER NUMBER

3728

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/815,466	Applicant(s) COBIAN, JOHN	
	Examiner Jila M. Mohandesi	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>04/22/05, 10/20/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lederer, Stefan (Publication No. DE004118311), hereinafter Lederer. Lederer discloses a footwear comprising: a footbed having an upper support surface (layer 14a), bottom sole (layer 14d) and a central portion (layer 14b) there between; an upper (layer 12) interconnected with the footbed for retaining the footwear on a foot; a plurality of drainage apertures (14a3) formed in the upper support surface of the footbed; a plurality of vertical drainage channels (14a3, see figure 2 embodiment) extending from the drainage apertures into the central portion of the footbed; and a plurality of horizontal drainage channels (14b2) within the central portion of the footbed extending from the vertical drainage channels to exit apertures about the peripheral edge of the footwear. See Figures 1-3 embodiments.

3. Claims 1 and 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Meucci (1,932,557). Meucci '557 discloses a footwear comprising: a footbed having an upper support surface (layer f), bottom sole (layer a) and a central portion (layer b) there between; an upper (see Figure 3 embodiment) interconnected with the footbed for retaining the footwear on a foot; a plurality of drainage apertures (see figure 2

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embodiment) formed in the upper support surface of the footbed; a plurality of vertical drainage channels (through holes in the upper support surface, see figure 3 embodiment) extending from the drainage apertures into the central portion of the footbed; and a plurality of horizontal drainage channels (channels c) within the central portion of the footbed extending from the vertical drainage channels to exit apertures about the peripheral edge of the footwear. See Figures 1-8 embodiments.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lederer in view of Mochizuki (4,525,940). Lederer as described above discloses all the limitations of the claims except for the upper comprising a thong extending between the footbed and a strap. Mochizuki '940 discloses that it is desirable to make upper as a thong and strap for easier wearing of the footwear. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the upper of Lederer as a thong and strap as taught by Mochizuki '940 for easier wearing of the footwear.

Conclusion

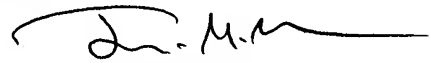
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown is footwear analogous to applicant's instant invention.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jila M. Mohandesi whose telephone number is (571) 272-4558. The examiner can normally be reached on Monday-Friday 7:30-4:00 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JILA M. MOHANDESI
PRIMARY EXAMINER**



Jila M Mohandesi
Primary Examiner
Art Unit 3728

JMM
October 26, 2005